

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

A.B.S., as surviving daughter of deceased)
ANTHONY L. SMITH, and a minor, by)
and through her next friend CHRISTINA)
WILSON,)

Plaintiff,)

Case No.: 4:12-cv-00202-JCH

v.)

BOARD OF POLICE COMMISSIONERS,)
Et al.,)

Defendants.)

**PLAINTIFF A.B.S.'S CONSENT MOTION FOR EXTENSION OF TIME AND
MODIFICATION OF SCHEDULING ORDER**

COMES NOW Plaintiff, by and through her undersigned counsel, and for her Consent Motion For Extension of Time and Modification of Scheduling Order states to the Court as follows:

1. This Court entered its Scheduling Order on April 9, 2018 (Doc. 140).
2. The Court modified the Scheduling Order on June 25, 2018 (Doc. 147), July 2, 2018 (Doc. 149), August 6, 2018 (Doc. 153), August 17, 2018 (Doc. 157).
3. The reason for the recent modifications were a series of agreements between Plaintiff and the Board regarding additional documents to be produced in this matter.
4. The additional documents produced included, but were not limited to, the complete IAD file maintained by the Board of Police Commissioners, including documents generated by the Federal Bureau of Investigation.
5. In addition to the IAD file, the Board made a limited waiver of attorney-client privilege as to certain documents it previously withheld from its production.

6. The limited waiver production was produced on August 22, 2018.

7. On August 9, 2018, Plaintiff's counsel appeared at police headquarters and made a visual inspection of the documents contained in the IAD file. The IAD file also contains more than 100 discs containing audio/visual recordings.

8. Plaintiff's counsel then reached an agreement with the FBI and U.S. Attorney's office to permit the disclosure, pursuant to an existing protective order, of FBI documents contained within the IAD file.

9. The Board then copied and produced the requested contents of the IAD file, which included the contents of more than 35 discs containing audio/visual files, to Plaintiff's counsel on Monday, August 27, 2018.

10. Upon review of the production, comparison with previously produced documents and conference with counsel for Jason Stockley, it is Plaintiff's understanding there are numerous statements made by SLMPD personnel ("*Garrity* Statements"), which exist in audio format and which Plaintiff's counsel did not locate during their initial inspection of the IAD file.

11. It is Plaintiff's understanding there were parallel IAD investigations into this matter between 2011 and 2013. One investigation was for the purpose of investigating criminal conduct by SLMPD personnel, while the second was for internal disciplinary purposes.

12. Plaintiff has expressed concern to defense counsel that portions of the IAD file produced to Plaintiff in this matter pertain solely to the criminal investigation by IAD and there may be a second set of documents in a separate IAD file pertaining to the internal investigation and said file contains recorded *Garrity* Statements by Jason Stockley, his partner Brian Bianchi, and several other SLMPD officers, which existed in IAD files prior to June 20, 2013. Plaintiff's

belief is based primarily on the fact that Plaintiff was unable to locate the audio recorded statements during their inspection of the IAD file on August 9, 2018.

13. Plaintiff has inquired of the Board's counsel regarding the existence of the recorded *Garrity* statements and other materials and the Board has indicated it will confirm that the recorded *Garrity* statements are in fact contained on one of the more than 100 discs in the IAD file. Board's counsel will also confirm that no additional documents or items exist.

14. The current written discovery deadline in this matter is September 1, 2018.

15. Plaintiff is confident additional responsive documents in this matter will be forthcoming from the Board's counsel and an extension of time will be required to facilitate same.

16. Plaintiff, with the Board's consent, requests an extension of time through September 14, 2018 to complete written discovery in this matter.

17. Plaintiff, with the Board's consent, requests an extension of the deadline to file Motions to Compel through September 21, 2018 in this matter.

18. In addition, the current deadline to complete depositions is September 14, 2018. There have been two (2) depositions in this matter thus far with additional depositions scheduled for September 5, 11, 14 and 20.

19. It is anticipated there may be one additional deposition that is currently being negotiated between Plaintiff's counsel and counsel for the deponent.

20. Plaintiff, with the Board's consent, requests an extension of time through September 30, 2018 to complete depositions in this matter.

21. Counsel for all parties have been diligent in addressing discovery matters and cooperative with one another in minimizing the need for judicial intervention to address discovery matters.

22. It is Plaintiff's good faith belief such extensions will be the most efficient use of judicial resources in that it will allow the parties to narrow the scope of the discovery issues to be resolved by the Court.

23. This Motion is not made for the purpose of delay or any other improper purpose and granting this Motion will not unduly prejudice any party.

WHEREFORE Plaintiff prays this Honorable Court grant Plaintiff's Motion for Extension of Time consistent with the requests set forth above and for such other and further relief as the Court may deem just and proper under the circumstances.

KODNER WATKINS, LC

/s/ Michael D. Schwade

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CERTIFICATE OF SERVICE

Signature above is certification that on this the 1st day of September, 2018 a true and correct copy of the foregoing document was filed electronically using the CM/ECF System which will cause a copy to be served upon all counsel of record.